



May 25, 2001

Mr. C. David Richards, III
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2001-2166

Dear Mr. Richards:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147646.

The Texas Department of Health (the "department") received a request for any information compiled during an investigation of a formerly licensed Speech-language Pathologist/Audiologist. You state that the Order Accepting Surrender of License will be released to the requestor. You claim that the remaining requested information is excepted under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Pursuant to section 552.301(b), a governmental body must request a decision from this office not later than the tenth business day after receiving the written request for information. You admit that you did not request a decision within the ten days as required by section 552.301(b) of the Government Code. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You argue that the submitted information is excepted under section 552.101 of the Government Code. Section 552.101 of the Government Code provides a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Therefore, we will address your claimed exception.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by statute. Chapter 401 of the Occupations Code deals with the regulation of speech-language pathologists and audiologists. Prior to the codification of the Occupations Code, provisions relating to speech-language pathologists and audiologists were located in article 4512j of the Revised Civil Statutes. The 76th Legislature, however, repealed article 4512j and adopted Chapter 401 of the Occupations Code.¹ Without reference to the repeal of article 4512j, the 76th Legislature added section 24A to article 4512j of the Revised Civil Statutes.² Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment of article 4512j is preserved and given effect as part of the code provision. *See* Gov’t Code § 311.031(c). Section 24A of article 4512j provides in pertinent part:

(h) All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Section 552.001 *et seq.*, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:

- (1) persons involved with the board in a disciplinary action against the holder of a license;
- (2) professional speech-language pathologist and audiologist licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

¹ *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, 1999 Tex. Gen. Laws 1431.

² *See* Act of May 30, 1999, 76th Leg., R.S., ch. 1444, § 8, 1999 Tex. Gen. Laws, 4899, 4904.

(i) The filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Section 552.001 *et. seq.*, Government Code.

V.T.C.S. art. 4512j, § 24A(h)-(i).³ Section 401.101 provides that the State Board of Examiners for Speech-Language Pathology and Audiology (the “board”) is within the Texas Department of Health. You explain that the submitted information was compiled by the board in connection with a complaint and investigation. It does not appear that any of the release provisions apply. Having reviewed the submitted information, we agree that you must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 24A of article 4512j of the Revised Civil Statutes.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

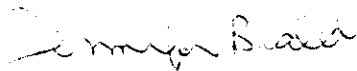
³The text of section 24A of article 4512j is found following section 401.253 of the Occupations Code, which pertains to complaint investigations and disposition.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 147646

Encl. Submitted documents

cc: Ms. Tawnell D. Hobbs
Reporter
The Dallas Morning News
P. O. Box 655237
Dallas, Texas 75265
(w/o enclosures)